

## AMENDMENT NO. 1

TO

### RIVERSIDE BUSINESS PARK PUBLIC ACCESS AGREEMENT

**THIS AMENDMENT NO. 1 TO RIVERSIDE BUSINESS PARK PUBLIC ACCESS AGREEMENT** (this "*Amendment*") is dated for reference purposes February 12, 2016, and is entered into by and between the PORT OF EVERETT, a port district organized under the laws of the State of Washington (the "*Port*"), and the CITY OF EVERETT, a Washington municipal corporation (the "*City*").

### RECITALS

- A. The City and Port are parties to the Riverside Business Park Public Access Agreement dated December 28, 2016 (the "*Agreement*"), concerning public access improvements at Riverside Business Park. All capitalized terms in this Amendment are as defined in the Agreement.
- B. In connection with the Agreement, the parties recorded Lot Easements against Lot 2 and Lot 3 under Snohomish County recording numbers 201601140208 and 201601140209, which created a 16 foot wide easement area within the 50-foot buffer along the Snohomish River. For the purposes of this Amendment, the combined easement areas of the Lot 2 and Lot 3 Lot Easements are referred to as the "*Combined Easement Area*."
- C. The Port has recorded a boundary line adjustment under Snohomish County recording number 201701115003 (the "*2016 BLA*"), which, among other things, removed the 50-foot shoreline buffer from Lot 2 and Lot 3 and created a new Parcel D. The Combined Easement Area is within this new Parcel D.
- D. The Port and City have agreed that the Port will construct public access shoreline improvements within the Combined Easement Area. In connection with this, the City will terminate the Lot Covenants for Lot 2 and Lot 3.
- E. Accordingly, the purpose of this Agreement is to formalize the City and Port's agreements regarding Lot 2, Lot 3, and Parcel D.

### AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. Definitions

In addition to terms defined elsewhere in the Agreement, the following terms are defined for this Amendment as follows:

A. ***“Water Dependent Use”*** means a use that is a “water dependent” use, as “water dependent” is defined in Title 19 of the Everett Municipal Code or successor ordinance.

B. ***“Non-Water Dependent Use”*** means a use that is not a “water dependent” use, as “water dependent” is defined in Title 19 of the Everett Municipal Code or successor ordinance.

C. ***“Property Non-Water Development Permit”*** means any City-issued permit for development of Lot 2 or Lot 3 for Non-Water Dependent Use, including without limitation permits such as shoreline permits, building permits and grading permits.

D. ***“First Property Non-Water Development Permit”*** means the first Property Non-Water Development Permit issued after the date of the Agreement.

E. ***“Parcel D Public Access Shoreline Improvements”*** means an eight-foot wide shoreline trail constructed in accordance with the Trail Requirements connecting from the North Viewpoint to the Central Viewpoint, with a split rail fence on the Snohomish River side of the trail, separating the trail from adjacent buffer.

## **2. Construction of Parcel D Public Access Shoreline Improvements / Use Restriction**

A. Construction and Deadline. Port agrees and covenants to construct the Parcel D Public Access Shoreline Improvements in accordance with this Amendment no later than [twenty (24) months after issuance of the First Property Non-Water Development Permit]. Unless otherwise approved by the City (which approval may be withheld at the City’s sole discretion and which approval must reference this Section 2.A in order to be effective), the Parcel D Public Access Shoreline Improvements shall be completely within the Combined Easement Area. Port shall construct the Parcel D Public Access Shoreline Improvements so that the Parcel D Public Access Shoreline Improvements provide for connection to public access improvements on neighboring lots, to provide for continuity and avoid dead-ends.

In addition to the Parcel D Public Access Shoreline Improvements, Port shall simultaneously construct the buffer and landscaping surrounding the Parcel D Public Access Shoreline Improvements in accordance with applicable shoreline permit requirements. In general, the buffer must be a minimum 50 foot wide strip along the entire shoreline, and must contain trees, shrubs and other plantings by Port as specified by the City. A schematic sketch of the buffer and the Parcel D Public Access Shoreline Improvements is attached as Exhibit A. Additional information regarding the required buffer is available from the City of Everett Planning Department.

B. Use Restriction. The Combined Easement Area may not be used for any purpose inconsistent with Parcel D Public Access Shoreline Improvements.

## **3. Dedication of Public Access Shoreline Improvements.**

Within ninety (90) days after completion of Parcel D Public Access Shoreline Improvements in accordance with this Amendment and the acceptance of such improvements by

the City, Port shall, at no cost to the City, execute and deliver to the City such documents as may be necessary to demonstrate that the Parcel D Public Access Shoreline Improvements are dedicated for public use and are City property. If the City has agreed under Section 2.A above that Public Access Shoreline Improvements may be constructed outside of the Combined Easement Area, Port shall provide legal descriptions and drawings for a revised easement area that contains all of the Parcel D Public Access Shoreline Improvements. The parties shall then fully execute and record easement amendments as necessary to so revise the Combined Easement Area. In any event, the easement areas for shoreline trails will be within a shoreline corridor of 50 feet in width (or such wider width as may be required by the Department of Ecology), which corridor includes will include trail and buffer, but will not include any bulkhead. In addition, the shoreline permit issued for improvements under this Amendment will state usual and customary requirements for landscape within shoreline jurisdiction, including, for example, Port responsibility for landscape maintenance and monitoring for a period after dedication. At the time of dedication, the Port will provide the City with landscape assurance device(s) for such requirements reasonably acceptable to the City. The assurance device will be in a form and an amount as is usual and customary for landscape dedicated to the City. The City is responsible, effective upon dedication of the Parcel D Public Access Shoreline Improvements to the City, to maintain the Parcel D Public Access Shoreline Improvements within the Combined Easement Area at the City's cost.

#### **4. Termination of Combined Easement Area.**

A. Change from Non-Water Dependent to Water Dependent Use. If after the date of dedication of the Parcel D Public Access Shoreline Improvements, Lot 2 or Lot 3 use is changed from non-water dependent use to water dependent use, as "water dependent" is defined in Title 19 of the Everett Municipal Code or successor ordinance, then Port may, subject to Section 4.B below, terminate shoreline portions of the Combined Easement Area therein to the extent reasonably necessary to accommodate the water dependent use, which termination will also cause the Parcel D Public Access Shoreline Improvements within the terminated Combined Easement Area to be deemed no longer dedicated to public use and become the property of Port, transferred to Port strictly "AS-IS" and "With all Faults". The Port and the Grantee will cooperate with each other to execute and record such documents as may be reasonably necessary to give record notice of any easement termination. Regardless of any termination of any Lot Easement, this Amendment remains in full force and effect.

#### **B. Combined Easement Area Termination Requirements.**

1. Connector Trail. If removal of Parcel D Public Access Shoreline Improvements on the Property will cause a public shoreline trail on Lot 3 to dead-end, then Port and Grantee will confer the feasibility of constructing and dedicating for public use a connection trail, for the purpose of providing a direct connection from the dead-end public shoreline trail to other public trails north of the Property, with all such improvements at Port's sole cost. Because of the variety of configurations that could occur, it is not possible to predict in advance the feasibility of such a connection trail. Accordingly, the parties agree that questions regarding such a connection trail will be determined in light of applicable law regarding public trails and shoreline management at the time such questions arise.


2. Later Change from Water Dependent to Non-Water Dependent Use. If after the date of Combined Easement Area termination, the Property use is changed from water dependent use to non-water dependent use, as “water dependent” is defined in Title 19 of the Everett Municipal Code or successor ordinance, then Port shall re-construct the former Parcel D Public Access Shoreline Improvements and re-dedicate them to the City for public use by an easement substantially in the form of the original Lot Easements. The City may condition Property Non-Water Development Permits on such re-construction and re-dedication.

**5. Agreement Remains in Effect.**


Except as modified by this Amendment, the Agreement remains in full force and effect.

**[SIGNATURE PAGES FOLLOW]**

**PORT OF EVERETT**

  
By: Les Reardanz  
Its: CEO/Executive Director

Approved as to form:

 2/13/17  
By: Bradford N. Cattle  
Port Attorney

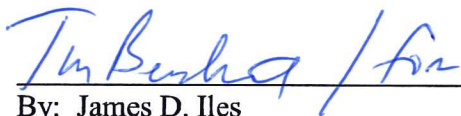
**CITY OF EVERETT**

\_\_\_\_\_  
By: Ray Stephanson  
Its: Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

  
By: James D. Iles  
City Attorney

**PORT OF EVERETT**

\_\_\_\_\_  
By: Les Reardanz  
Its: CEO/Executive Director


Approved as to form:

\_\_\_\_\_  
By: Bradford N. Cattle  
Port Attorney


**CITY OF EVERETT**

  
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By: Ray Stephanson  
Its: Mayor

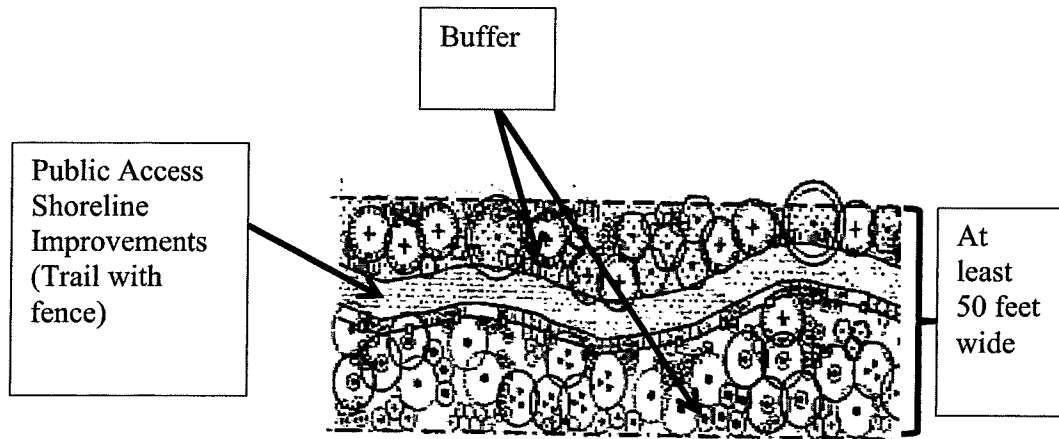
Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
By: James D. Iles  
City Attorney

**EXHIBIT A**  
**TO**  
**RIVERSIDE BUSINESS PARK**  
**PUBLIC ACCESS AGREEMENT**



Amendment Exhibit A



Agreement amended

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

#5

**PROJECT TITLE:**

Amendment No. 1 to  
Riverside Business Park  
Public Access Agreement  
and Associated Covenant  
Terminations Regarding  
the Riverside Business  
Park

Consent  
Action  
First Reading  
Second Reading  
Third Reading  
Briefing

**COUNCIL BILL #**

Originating Department

Planning/Legal

Contact Person

Allan Giffen, Tim Benedict

Phone Number

425-257-8725/8669

FOR AGENDA OF

February 15, 2017

Initialed by:

Department Head

CAA

Council President



**Location**

Riverside Business Park

**Preceding Action**

Public Access  
Agreement

**Attachments**

Amendment and  
Associated Agreements

**Department(s) Approval**

Planning, Legal,  
Administration

Amount Budgeted	-0-	
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

In 2015, the City Council approved an agreement with the Port of Everett setting up the framework for future construction of public trails, viewpoints and sidewalks within the Riverside Business Park. The agreement allocated responsibility for construction of those improvements between the Port and future owners of the Riverside Business Park lots.

The Port of Everett has proposed to amend the Agreement, for the purpose of transferring construction responsibility for some of the improvements from future owners to the Port. This does not change what will be built. City staff view this change positively, as it places construction responsibility directly on the Port.

This action items also authorizes the Mayor to sign terminations of covenants recorded against two lots at the Riverside Business Park. Those covenants, imposing construction responsibility on the future owners, are no longer required as the Port is assuming that responsibility.

**RECOMMENDATION:**

Authorize Mayor to sign Amendment No. 1 to Riverside Business Park Public Access Agreement and Associated Covenant Terminations Regarding the Riverside Business Park, all in Substantially the Form Provided.

APPROVED BY COUNCIL 4/17/2017